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Brian Williams, and Jamelah Torres*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JESSE ARON ROSS,

Plaintiff,

v.

BRIAN SANDOVAL, *et al.*,

Defendants.

Case No. 2:17-cv-02386-APG-GWF

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Defendants Julio Calderin, Robert Owens, Perry Russell, Brian Williams, and Jamelah Torres, by and through counsel, Adam Paul Laxalt, Nevada Attorney General, and Jared M. Frost, Senior Deputy Attorney General, of the State of Nevada, Office of the Attorney General, hereby submit this opposition to Plaintiff's motion for preliminary injunction filed November 6, 2017 (ECF No. 8). Defendants' opposition is made and based on the following points and authorities, the attached exhibits, the pleadings and papers on file, and any other evidence the Court deems appropriate to consider.

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1 **I. BACKGROUND AND PROCEDURAL HISTORY**

2 This is a civil rights action filed pursuant to 42 U.S.C. section 1983. Plaintiff Jesse
 3 Aron Ross is an inmate in the lawful custody of the Nevada Department of Corrections
 4 (NDOC) who is currently incarcerated at High Desert State Prison (HDSP) in Indian
 5 Springs, Nevada.

6 On September 11, 2017, Plaintiff filed a civil rights Complaint alleging 18 counts of
 7 federal and state law claim against various NDOC and State of Nevada employees. ECF
 8 No. 1-1. Plaintiff filed an Amended Complaint on September 25, 2017. ECF No. 6-1.

9 On November 6, 2017, Plaintiff filed a motion for a preliminary injunction alleging
 10 that Defendants were ignoring his serious dental needs. *See* ECF No. 8.

11 On December 4, 2017, this Court screened the Amended Complaint and directed the
 12 Office of the Attorney General to advise the Court whether it can accept service on behalf
 13 of the named Defendants within 7 days. ECF No. 9 at 25. The Court further ordered
 14 Defendants to file a response to Plaintiff's motion for preliminary injunction within 7 days.
 15 *Id.* at 26.

16 This opposition to Plaintiff's preliminary injunction motion follows.

17 **II. APPLICABLE LAW**

18 Injunctive relief, whether temporary or permanent, is an "extraordinary remedy,
 19 never awarded as of right." *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 24 (2008).
 20 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on
 21 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,
 22 that the balance of equities tips in his favor, and that an injunction is in the public interest."
 23 *Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)
 24 (quoting *Winter*, 555 U.S. at 20). Furthermore, under the Prison Litigation Reform Act
 25 ("PLRA"), preliminary injunctive relief must be "narrowly drawn," must "extend no further
 26 than necessary to correct the harm," and must be "the least intrusive means necessary to
 27 correct the harm." 18 U.S.C. § 3626(a)(2).

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1 **III. PLAINTIFF'S MOTION**

2 In his preliminary injunction motion, Plaintiff states that on January 21, 2017,
 3 January 29, 2017, and February 6, 2017, he submitted requests for dental treatment. ECF
 4 No. 8 at 4. Plaintiff was seen by Dr. Mangapit on March 27, 2017; however, Plaintiff alleges
 5 that Dr. Mangapit refused to treat all of Plaintiff dental issues. *Id.*

6 Plaintiff further states that on March 30, 2017, he submitted a grievance concerning
 7 his dental care. *Id.* On April 3, 2017, Plaintiff states that his grievance was upheld and
 8 that the grievance responder informed him that an appointment would be scheduled to
 9 address any outstanding dental issues. *Id.* at 4-5. However, Plaintiff asserts that as of
 10 November 1, 2017, he had not been seen by a dental provider and that he has 7 to 10 cavities
 11 that are causing him chronic pain. *Id.* at 5. Plaintiff alleges that the pain is so severe that
 12 he has difficulty eating and sleeping. *Id.*

13 **IV. DEFENDANTS' EVIDENCE**

14 A review of available prison records confirms that Plaintiff submitted requests for
 15 dental treatment on January 27, 2017, Exhibit 1; January 31, 2017, Exhibit 2; February 6,
 16 2017; Exhibit 3; and February 9, 2017, Exhibit 4. In his dental requests, Plaintiff states
 17 that two of his teeth were causing him extreme pain and needed to be extracted. See
 18 Exhibits 1 to 4. In response to each request, dental staff informed Plaintiff that he would
 19 be seen within sixty (60) days and that he should inform the sick call nurse if his symptoms
 20 worsened prior to the appointment. *Id.*

21 The records also confirm that Plaintiff was seen by Dr. Mangapit, a former NDOC
 22 dental provider, on March 27, 2017. Exhibit 5. The NDOC's dental chart contains the
 23 following entry related to the March 2017 appointment: "M dx [medical diagnosis] no
 24 change, 'My tooth hurts' - #3, has caries [decay and crumbling of a tooth] to pulp and root
 25 – non salvageable – no complications – home care inst [instruction] given, Rx [prescription]
 26 Ibuprof [Ibuprofen] 200 pack given – 1 PA [posterior anterior x-ray] taken."¹ Exhibit 5.

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 28 ¹ Dr. Mangapit's handwritten March 2017 dental chart entry is difficult to read and
 contains a number of medical abbreviations or contractions. The bracketed text represents

1 Electronic grievance records² indicate that prison staff received an informal
2 grievance from Plaintiff complaining about his dental care on or about April 3, 2017.
3 Exhibit 6 at 4. The grievance responder upheld Plaintiff's grievance and informed Plaintiff
4 that he would be put on the list to be seen by a dental provider. *Id.* at 3; *see also* ECF No.
5 8 at 15.

6 Electronic records further indicate that prison staff received a second informal
7 grievance from Plaintiff on or about October 9, 2017. Exhibit 7 at 2. In response to this
8 grievance, the grievance responder informed Plaintiff that he had been referred to the
9 dental department and that inmate health care is provided on a priority basis. *Id.* at 1. The
10 grievance responder further noted that Plaintiff received pain medication on October 6,
11 2017. *Id.*

12 On December 11, 2017, Dr. Sanders evaluated and treated Plaintiff at HDSP. *See*
13 Exhibit 5. Dr. Sanders' chart entry indicates that Plaintiff was seen at the request of the
14 Director of Nursing as Plaintiff had not submitted a treatment request to dental staff. *Id.*
15 The chart entry further indicates that Dr. Sanders performed an oral examination, treated
16 Plaintiff's tooth #4D, and informed Plaintiff that in the future he should submit requests
17 to the dental department to ensure that he receives treatment for any dental issues. *See*
18 *id.*

19 **V. ARGUMENT**

20 Plaintiff's immediate dental needs have been addressed and his preliminary
21 injunction motion should therefore be denied. Defendants' evidence shows that Plaintiff
22 was evaluated and treated by Dr. Sanders on December 11, 2017. *See* Exhibit 5.
23 Furthermore, Dr. Sanders explained to Plaintiff that in the future he should submit
24 requests to the dental department to ensure that he receives treatment for any dental
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26 the undersigned's best guess as to the meaning of the entry in an effort to assist the Court
27 and is not offered as an authoritative interpretation of the entry.

28 ² The undersigned was unable to obtain copies of original grievances in time to meet
the Court's expedited briefing schedule.

1 issues. *Id.* Defendants stand ready and willing to provide necessary dental care in
2 accordance with prison policies and practices, and the Court should therefore deny
3 Plaintiff's motion for the "extraordinary remedy" of injunctive relief.

4 DATED this 11th day of December, 2017.

5 ADAM PAUL LAXALT
6 Attorney General

7 By: /s/ Jared M. Frost
8 JARED M. FROST (Bar No. 11132)
Senior Deputy Attorney General

9 *Attorneys for Defendants*

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1 DEFENDANTS' LIST OF EXHIBITS

- 2 Exhibit 1 Dental request dated January 27, 2017
3 Exhibit 2 Dental request dated January 31, 2017
4 Exhibit 3 Dental request dated February 6, 2017
5 Exhibit 4 Dental request dated February 9, 2017
6 Exhibit 5 NDOC dental chart
7 Exhibit 6 Grievance 45392 (electronic NOTIS version)
8 Exhibit 7 Grievance 57050 (electronic NOTIS version)

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on December 11, 2017, I electronically filed the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** via this Court's electronic filing system. Parties who are registered with this Court's electronic filing system will be served electronically. For those parties not registered, service was made by depositing a copy for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, addressed to the following:

Jesse Aron Ross, #1095756
High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070
Plaintiff, Pro Se

/s/ Barbara Fell
Barbara Fell, an employee of the
Office of the Nevada Attorney General